Dear Yoni,

Here are my comments on the document you sent me.

Israel insists, correctly, that any investigation should be conducted by a Committee appointed by Israel and with Terms of Reference articulated by the Government of Israel. There will be huge opposition to this from many quarters, including friends, and not least from Turkey who will put great pressure on the White House.

Therefore, one should attempt so far as possible to make this Committee – in terms of its Composition and Terms of Reference – have the greatest appearance of independence and impartiality. The composition of the Committee and its Terms of Reference should make it very difficult to attack and very difficult for the White House LeHitkapel.

With this in mind here are some thoughts on composition and Terms of Reference

Composition

The names Minister Barak mentioned to me are unsuitable. All of them. A Committee chaired by a former Minister in a Likud government who has no experience in international law will have no credibility or will reduce the credibility in many quarters unnecessarily. Equally, a former Legal Advisor to the Ministry of Defense, with no international legal reputation, will not be credible. He will seem too close to the subject of investigation. My good friend Yaffa, might be good for internal consumption, but she has no international reputation at all. Fact.

If you choose outside names, you cannot choose names who will instantly be conceived, by a single Google Search, as "hired guns" of Israel such as Dershowtiz, Kotler or Bayefsky.

The names have to be ones that all reasonable persons and the sane international media in the US and Europe will find above reproach.

From Israel:

Ideally there should be a Judge. The best candidate would be Shamgar. I know he has said that he would not accept unless Beinish appoints him; but since she wont, maybe he could be persuaded and be the Chairman. A former Israeli Chief Justice – the independence and the appearance of independence is assured. If not him, some other judge with international law experience.

The only Israeli public international lawyers with a world wide reputation are Dinstein, Lapidoth and of the new generation, Eyal Benvenisti. You should consult Mautner on their suitability. I believe Lapidoth would be the most suitable.

You might wish to have one Israeli who is not a lawyer but a former Naval Officer. (My brother Dr Daniel Weiler, is a former Deputy Commander of one of our Submarines. Hugely impressive person. 0545 322 422)

An Israeli Committee does not necessarily mean only Israelis. It means appointed by the Government of Israel. I would suggest as a Member Professor Jochen Frowein from Germany, a former Director of the Max Planck Institute in Heidelberg. Also former Vice President of the European Commission of Human Rights. He is a great friend of Israel and has been here many times. He is hugely respected world wide. He is the kind of person that Ban Ki Moon himself could appoint. Someone like him would take the wind out of any claim that the Committee is not impartial or not international enough.

Observers (Mashkifim)

Minister Barak asked me to suggest a name from Asia. I would suggest Tommy Koh from Singapore. A former Professor and Dean of the Law Faculty and Ambassador at Large he is a hugely respected Diplomat and Jurist and a friend of Israel. He has considerable experience and is arguable one of the most respected Asia jurists/Diplomats. Google will give the details.

Terms of Reference

We cannot make the mistake of writing terms of reference which will mirror the very same kind of stuff which we rightly criticized with the Goldstone Report.

Here are some observations:

1. The biggest challenge is the following. This Committee will have NO credibility in the eyes of the world if it does not indicate that it will at least offer to take evidence from the passengers on the ship. If they are offered and refuse, it is another thing. But no one will accept conclusions as credible and authoritative if the Committee only listened to one side, the Israeli side. The terms of reference absolutely have to envisage taking evidence from the passengers of the ships if the conclusion of the Committee are to be at all credible.

2. In the eyes of the world "innocent" civilians were killed. One cannot 'load the dice' in the Terms of reference. So there has to be a terms which will say something like:

   > *The Government of Israel regrets the loss of innocent civilian life. The Committee will be charged to report on the events surrounding the use of deadly force and its appropriateness in the circumstances; on the status of those injured and killed and those who attacked the boarding party etc. [The language would have to be refined, but I am giving an idea of what needs to go in.]*

   No one will understand Terms of Reference which do not make reference to the "Civilian" casualties and to the issue of use of force against them. Of course in its conclusions the Committee could expose who these "civilians" were, and why force might have been needed.

3. Your paragraph 5 has to be eliminated. It makes no sense in this context. Has there been an investigation of the Patzar? Or we already conceding that there has to be an investigation of the Patzar? Keep that out. Save it for the other committee which almost certainly will have to be established when attention goes back to Gaza and Goldstone – ahead of the conclusions of the Secretary General.

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These are my general impressions. I am in Israel today and would be happy, if asked, to work on actual drafting of Terms of Reference if the approach I suggest is acceptable to you.

My role: You, the Minister of Defense and the Prime Minister know of my commitment to serve and this applies in this case. In the present circumstances I think you should keep me in reserve only if at any point Israel is forced to accept an international Committee (such as that suggested by Ban Ki Moon with the Prime Minister of N. Zealand etc.) – Also, since I am convinced that eventually Lo Yihiye Manos, to appoint a Committee to anticipate the conclusions of the Secretary General on Oferet Yetzukah, I should not be burnt on this issue unless absolutely necessary. I think my real strengths would better serve the State as Chair of that other Committee if and when it is appointed as we discussed in the past.

If you need me, you can reach me on my American cell phone during the day. If you send me a text, I can call back.